he participated in the decision-making uninfluenced by the donation. On the other hand, such grave departure from the mandatory provisions of Article LIII(8), conveys but one conclusion and that is that he demanded and received the donation for the corrupt exercise of his public duty.

The accused has shown the utmost disregard for truth but then he is fighting for his integrity and honour. In the face of the numerous defects and anomalies in his evidence, all of which appear to be very material, I cannot say that he has created a doubt in the truth of the prosecution case.

During the course of the trial and at the stage when the prosecution sought to bring in evidence of similar facts under sections 14 and 15 of the Evidence Act to rebut the defence of corrupt intention, I did say that I would give a ruling in due course. I now do so, and I rule that Exhibit P48 and Exhibit P49 are not cogent and credible enough to merit consideration.

I find the accused guilty on all 3 charges.

Sentence:

It is painful for me to have to sentence a man I know. I wish it were the duty of some other judge to perform that task.

I believe the very extensive coverage of this hearing in the press has permeated all levels of our society. To me this hearing seems to re-affirm the vitality of the rule of law. But to many of us, this hearing also suggests a frightening decay in the integrity of some of our leaders.

It has given horrible illustrations of Lord Acton's aphorism "power tends to corrupt, and absolute power corrupts absolutely", and has focussed concern on the need of some avowed limitations upon political authority.

I repeat what I had said before — the law is no respector of persons. Nevertheless it will be impossible to ignore the fact that you are in a different category from any person that I have ever tried. It would be impossible to ignore the fact that, in the eyes of millions of our countrymen and women, you are a patriot and a leader. Even those who differ from you in politics look upon you as a man of high ideals. You had every chance to reach the greatest height of human achievement. But half-way along the road, you allowed avarice to corrupt you. It is incomprehensible how a man in your position could not in your own conscience, recognise corruption for what it is. In so doing, you have not only betrayed your party cause, for which you have spoken so eloquently, but also the oath of office which you have taken and subscribed before your Sovereign Ruler, and above all the law of which you are its servant.

You insisted that the pay-offs were in fact political contributions given and received in keeping with long-established practices and they had been made to look criminal by a hostile witness, scuttling to save his own skin. But the evidence plainly show that you devised a scheme of unparallel cunning and committed an almost perfect crime. But crime, though it hath no tongue, speaks out at times. Your method is your own doing because even the long arm of coincidence cannot explain the multitude of circumstances against you, and they destroy the presumption of innocence with which the law clothed you.

Political contributions have been a highly-organised professional obligation in Europe and in the States; they are a sign of the times. Malaysia, it seems to me, is emulating that way of life. Whatever may be the moral of it, so long as they are not given and received for the corrupt exercise of official functions, they are not a crime.

I believe that for the past few months you have suffered something like tortures of hell. The deprivations and sufferings you and your family went through should be enough penance.

It is also true that for a public official who rose so high, disgrace and banishment from public life are severe punishment indeed. I have duly taken that into consideration and also what has been said by your counsel.

I sentence you to one year's imprisonment in respect of the 1st Charge and 2 years in respect of each of the 2nd and 3rd Charges. All these sentences to run concurrently.

I also order the payment of $225,000 to UMNO Selangor — if not paid within a month, execution to issue.

Order accordingly.

Solicitors: *R.R. Chelliah Bros.; Adlan & Haji Suhaimi.*

HAJI YAHAYA BIN HAJI AHMAN & ANOR. v. W.E. PERERA & ANOR.

[O.C.J. (Mohamed Azmi J.) May 31, 1976]
[Kuala Lumpur — Application for Execution No. 97 of 1975]

Practice and Procedure — Execution — Application for — Judgment debtor with no more interest in land — Order of sale against judgment debtor granted — Application to set aside Order of Sale — Whether there was material irregularity — R.S.C. 1957 0.43 r. 11(e).

This was an application under 0.43 r.11(e) of the Rules of the Supreme Court to set aside an auction sale in respect of a piece of land pursuant to order of Registrar on the ground of material irregularity. The order of sale was obtained by the first respondent to satisfy a judgment debt against one Omar as administrator *de bonis non* of the Estate of Haji Ahmad, deceased. At the hearing of the application for execution before the Registrar, counsel for the judgment debtor objected to the application on the ground that the estate of Haji Ahmad, deceased had no more rights or interests in the property since it had been sold by agreement to the first applicant (who in turn sold the property to the second applicant). Despite the said objection raised by counsel, order of sale was granted to the first respondent, and during the public auction the property was sold to the second respondent as agent of a company.

Held, allowing the application and setting aside the auction sale: (1) the debtor had parted with the whole interest in the land well before the execution proceedings commenced and, as such, there was nothing left for the judgment creditor to satisfy the judgment debt;

(2) the order of sale ought not to have been made and there was a material irregularity as far as the conducting of the sale was concerned, and the applicants as *bona fide* purchasers, had sustained substantial injury by reason of such irregularity.

Cases referred to:-

(1) *Temenggong Securities Ltd. & Anor.* v. *Registrar of Titles, Johore & Ors.* [1974] 2 M.L.J. 45.

(2) *Registrar of Titles, Johore* v. *Temenggong Securities Ltd.* [1976] 2 M.L.J. 44.

(3) *Karuppiah Chettiar* v. *Subramaniam* [1971] 2 M.L.J. 116.

APPLICATION FOR EXECUTION.

Ch'ng Keow Geen (Miss) for the applicants.

Morris Edgar for the 1st respondent.

2nd respondent, in person.

Mohamed Azmi J.: This is an application under Order 43 rule 11(e) of the Rules of Supreme Court to set aside an auction sale in respect of an undivided 14/32 share in the land held under E.M.R. No. 4209, Lot 1510, Town of Kuala Lumpur conducted on October 20, 1975 pursuant to order of Registrar dated July 3, on the ground of material irregularity. The Order of Sale was obtained by the first respondent (the decree holder in Kuala Lumpur High Court Civil Suit No. 382/72) to satisfy a judgment debt of $50,500 and costs against one Omar bin Haji Ahmad as Administrator *de bonis non* of the Estate of Haji Ahmad bin Haji Abdullah, deceased. At the hearing of the application for execution before the Registrar, Miss Ch'ng, who appeared as counsel for the judgment debtor Omar bin Haji Ahmad (Miss Ch'ng is also appearing for both applicants in the present case), objected to the application on the ground that the estate of Haji Ahmad bin Haji Abdullah (deceased) had no more rights or interests in the property since it had been sold by agreement to Haji Yahaya bin Haji Ahman (the first applicant) together with another piece of land for the sum of $24,000 vide agreement to sell dated November 16, 1973. As contained in the affidavit of Omar bin Haji Ahmad sworn on July 2, 1975 (enclosure 7), he obtained a Court Order on April 26, 1974 to sell the two pieces of land vide Kuala Lumpur High Court Originating Summons No. 125 of 1974. On obtaining the Court Order, he executed a transfer of the property in favour of Haji Yahaya — the first applicant in the present case. The first applicant then sold the property to the Joiner Enterprises (Pte.) Limited, the second applicant, who was then already the registered proprietor of the remaining undivided 18/32 share of the property. Despite the objection raised by Miss Ch'ng, Order of Sale was granted to the decree holder (first respondent); and during the public auction, the property was sold to the second respondent as agent of Eng Ann Housing Estate Klang for the price of $42,100.

It is admitted in the affidavit of the first applicant sworn on November 6, 1975 (enclosure 22) that both the transfer from Omar to first applicant and the transfer from first applicant to second applicant have not been registered although both sales were already complete. An attempt to register the transfer from Omar to the first applicant on June 23, 1975 was refused, in view of the Prohibitory Order registered on May 27, at the instance of the first respondent.

From the affidavits filed in this case, it is my finding that at all material times, viz. when judgment was entered in favour of the first respondent against Omar bin Haji Ahmad for the sum of $50,500 as administrator *de bonis non* of the Estate of Haji Ahmad on May 18, 1975, and also when a Prohibitory Order was registered on May 27, 1975 in respect of the property, and as well as when the Order of Sale of the property was made on July 3, 1975, the judgment debtor had no more interest in the land. As stated earlier, as early as April 26, 1974 the judgment debtor, pursuant to obtaining an order of court to sell the deceased's whole share in the property had transferred it to the first applicant on receipt of the balance of purchase price of $24,000. It is true that the transfer was not registered and that section 340 of the National Land Code 1965 makes the title and interest of a registered proprietor of land indefeasible irrespective of any unregistered transfer. However, it is equally true that after April 26, 1974 the judgment debtor as administrator *de bonis non* of the deceased's estate had no more interest in the property. Having sold the property to the first applicant and having received the full purchase money under the sale agreement, the first applicant became the equitable owner of the land under a contract binding on the judgment debtor as vendor — see the decision of Federal Court in *Temenggong Securities Ltd. & Anor.* v. *Registrar of Titles, Johore & Ors.*[1] which has recently been upheld by the Judicial Committee of the Privy Council.[2] Although that case dealt with Registrar's caveat under section 320(1)(b) of the National Land Code, their Lordships held that the restriction under the Torrens system on the kinds of interests in land which were capable of being registered did not prevent the creation of other kinds of interests in land or dealings with them. In particular it did not prevent or restrict the creation of beneficial interests in land whether under express trusts or under constructive or resulting trusts arising by operation of Malayan law, which in this respect was derived from the rules of equity in force in England in 1956. But their Lordships made it quite clear that the temptation to regard the distinction between registered and unregistered interests in land under the National Land Code as similar to the difference in English law between legal estates and equitable interests in land should be resisted, for the analogy was not close and was liable to be misleading. Their Lordships also held that, where the person registered as proprietor of land held the title as bare trustee for a beneficiary, the beneficiary might convert his beneficial interest into a registered interest by requiring the registered title to be transferred to him. In the present case, since the judgment debtor had no more interest in the property after April 26, 1974, it follows that he had no more interest in the property available for satisfaction of any judgment debt in 1975. In the premises, I am of the view that the Order of Sale dated July 3, 1975 is null and void and of no effect, and this has resulted in the refusal on the part of the Registrar of Titles to register the transfer from Omar to the first applicant in June 1975. As was held by the majority decision of the Federal Court in *Karuppiah Chettiar* v. *Subramaniam*,[3] the vendor having sold his entire interest in the land and received payment in full held the legal estate only as a bare trustee for the purchaser, who was the equitable owner; and the judgment creditor could only take whatever interest the debtor had. Similarly, in the present case, the debtor has parted with the whole interest in the land well before the execution pro-

ceedings commenced and, as such, there is nothing left for the judgment creditor to satisfy the judgment debt.

For the above reasons, I hold that there is material irregularity in the auction sale in that the Order of Sale dated July 3, 1975 ought not to have been made in the first instance. As *bona fide* purchasers for value of the debtor's whole interest in the land, both the applicants are persons whose interests are affected by the auction sale and, as such, they have *locus standi* in this matter as provided under Order 43 rule 11(e) of the Rules of Supreme Court. By reason of the improper issue of the Order of Sale, to my mind, there is a material irregularity as far as the conducting of the sale is concerned, and that the applicants as *bona fide* purchasers, have sustained substantial injury by reason of such irregularity.

I would therefore allow the application and set aside the auction sale. I also order that the purchase money, if already paid by the second respondent pursuant to the auction sale, should be refunded to him without interest.

Application allowed.

Solicitors: *Michael Chen & Lee; Morris Edgar & Co.*

T.C.S. v. DIRECTOR-GENERAL OF INLAND REVENUE

[A.C.J. (Syed Agil Barakbah J.) July 10, 1976]
[Alor Star — Originating Motion No. 22 of 1975]

Revenue Law — Income Tax — Sale of land — Isolated transaction — Whether adventure or concern in the nature of trade — Income Tax Act, 1967, s. 4(a).

This was an appeal on a question of law from the deciding order of the Special Commissioners. The question of law for the opinion of the court was whether on the evidence before them the Special Commissioners' decision that the isolated transaction in this case was an adventure or concern in the nature of trade and any profits or gains derived therefrom was assessable to income tax, was correct. The taxpayer in this case had bought some padi land for $31,500 and after getting approval for the alteration of the condition of tenure of the land sold it to a limited liability company for $580,000. The taxpayer transferred the profit in the form of shares to his wife and children. The taxpayer was assessed to tax in the sum of $538,790 and his appeal to the Special Commissioners was dismissed.

Held: the only conclusion that could be reasonably drawn on the facts as found by the Special Commissioners was that the appellant acquired the land with the expectation and intention of selling it as a profit and that it was an adventure in the nature of trade.

Cases referred to:-

(1) *E.* v. *Comptroller General of Inland Revenue* [1970] 2 M.L.J. 117, 122.
(2) *Commissioners of Inland Revenue* v. *Livingstone & Ors.* 11 T.C. 538, 542-543.
(3) *Eames* v. *Stepnell Properties Ltd.* [1967] 1 W.L.R. 593.
(4) *Californian Copper Syndicate* v. *Harris* 5 T.C. 159.
(5) *Taylor* v. *Good* [1974] 1 W.L.R. 556.
(6) *Cooksey and Bibbey* v. *Rednall* 30 T.C. 514.
(7) *Tebrau (Johore) Rubber Syndicate Ltd.* v. *Farmer* 5 T.C. 658.
(8) *Leeming* v. *Jones* 15 T.C. 333.
(9) *Hudson's Bay Co. Ltd.* v. *Stevens* 5 T.C. 424.
(10) *Commissioners of Inland Revenue* v. *Fraser* 24 T.C. 498, 501.
(11) *Smith Barry* v. *Cordy* 28 T.C. 250, 258.
(12) *National Association of Local Government Officers* v. *Bolton Corporation* [1943] A.C. 166, 184.
(13) *Rutledge* v. *Commissioners of Inland Revenue* 14 T.C. 490, 496.
(14) *Thew* v. *The South West Africa co. Ltd.* 9 T.C. 140, 158-159.
(15) *Williams* v. *Davies* 26 T.C. 371.

CASE STATED.

Lim Ewe Hock for the appellant.

Abdul Rashid (Senior Federal Counsel) for the respondent.

Syed Agil Barakbah J.: This is an appeal on a question of law made under Schedule 5, paragraph 34 of the Income Tax Act, 1967, against the deciding order of the Special Commissioners who have accordingly stated a case for the opinion of the High Court. The appellant appealed to the Special Commissioners in respect of the sum of $538,790 which was included under trade income in the assessment of income tax for the year of assessment 1974 as per notice of additional assessment dated January 18, 1975. The only ground of appeal was "that the sum of $538,790 included in the assessment under the heading of Trade Income is a capital profit not chargeable to income tax". In determining the sole question whether the said sum was assessable to income tax within the meaning of section 4(a) of the Act, the Special Commissioners decided that "there was evidence in abundance which all pointed one way, that the only reasonable conclusion we could arrive at was that this isolated transaction was an adventure or concern in the nature of trade and any profits or gains derived therefrom were assessable to income tax". Accordingly an order was issued by notice of additional assessment to the effect that the said sum included in the additional assessment for the year of assessment 1974 dated January 18, 1975, is assessable to income tax as it constitutes income in respect of gains or profits from a business within the meaning of section 4(a) of the Income Tax Act, 1967.

The question of law for the opinion of this court is whether on the evidence before them the Special Commissioners' decision that the isolated transaction was an adventure or concern in the nature of trade and any profits or gains derived therefrom were assessable to income tax, was correct.

Mr. Lim Ewe Hock appeared for the appellant and Senior Federal Counsel Encik Abdul Rashid for the respondent.

Both parties conceded from the very beginning that the transaction involved a single isolated transaction.

The following facts were not in dispute: —

(i) The appellant was a sundry shopkeeper, aged 50 years, who carried on his business at No. 53, Jalan Tunku Ibrahim, Alor Setar, Kedah. He was also a licensed moneylender.

(ii) On September 3, 1961, he entered into an agreement (hereinafter referred to as "the first agree-